

## Chapter 8.1

### EROSION AND SEDIMENT CONTROL AND STEEP SLOPE DEVELOPMENT\*

\* **Cross References:** Building regulations, Ch. 7; sewers and sewage disposal, Ch. 18; water, Ch. 22; zoning, App. A; subdivisions, App. B.

**State Law References:** Erosion and Sediment Control Law, Code of Virginia, § 10.1-50 et seq.

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#### **Sec. 8.1-1. Title, purpose and authority.**

This chapter shall be known as the "Erosion and Sediment Control and Steep Slope Development Ordinance of the County of Roanoke, Virginia." The purpose of this chapter is to conserve the land, water, air and other natural resources of the county by establishing requirements for the control of erosion and sedimentation, and by establishing requirements for development of steep slopes, and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-2. Applicability of chapter in Town of Vinton.**

The provisions of this chapter shall be applicable within the corporate limits of the Town of Vinton. Administrative procedures and review fees may be established to accommodate the review of plans for development located within the town.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-3. Definitions.**

As used in this chapter, unless the context requires a different meaning:

*Agreement in lieu of a plan* means a contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in all construction disturbing between two thousand five hundred (2,500) square feet and five thousand (5,000) square feet and/or two hundred fifty (250) to five hundred (500) cubic yards; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

*Applicant* means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

*Board* means the state soil and water conservation board.

*Certified inspector* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of project inspection.

*Certified plan reviewer* means an employee or agent of a program authority who:

- (1) Holds a certificate of competence from the board in the area of plan review;
- (2) Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (Code of Virginia, § 54.1-400 et seq.) of chapter 4 of title 54.1.

*Certified program administrator* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of program administration.

*Clearing* means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

*Conservation plan, erosion and sediment control plan or plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

*County* means the County of Roanoke.

*Denuded* means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

*Department* means the department of conservation and recreation.

*Development* means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units.

*Director* means the director of community development or his assignee.

*District or soil and water conservation district* refers to the Blue Ridge Soil and Water Conservation District.

*Dormant* refers to denuded land that is not actively being brought to a desired grade or condition.

*Erosion impact area* means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes.

*Excavating* means any digging, scooping or other methods of removing earth materials.

*Filling* means any depositing or stockpiling of earth materials.

*Geotechnical Report* means a report provided at the applicant's expense, prepared and stamped by a Professional Engineer, that communicates site conditions, and recommends design and construction methods.

- (1) The Geotechnical Report shall include any or all of the following basic information, as determined by the Professional Engineer:
  - a) Summary of all subsurface exploration data, including subsurface soil profile, exploration logs, laboratory or in situ test results, and ground water information;
  - b) Interpretation and analysis of the subsurface data;
  - c) Specific engineering recommendations for design;
  - d) Discussion of conditions for solution of anticipated problems; and
  - e) Recommended geotechnical special provisions.
- (2) For guidance in investigating site conditions and preparing geotechnical reports, the Professional Engineer may refer to all applicable sections of: "Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications", US Department of Transportation, Federal Highway Administration Publication No. FHWA ED-88-053, as amended.
- (3) The Geotechnical Report shall be submitted to the plan-approving authority and included in site development files prior to issuance of a land disturbing permit.

*Grading* means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

*Land-disturbing activity* means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repairs of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of chapter 11 (Code of Virginia § 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of Code of Virginia § 10.1-1163;
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, article 2 (§ 10.1-604 et seq.) of chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (10) Disturbed land areas for all uses of less than two thousand five hundred (2,500) square feet and/or less than two hundred fifty (250) cubic yards in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (12) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

*Land disturbing permit* means a permit issued by the county for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

*Local erosion and sediment control program or program* means an outline of the various methods employed by the county to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

*Owner* means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee

or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

*Permittee* means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, any interstate body, or any other legal entity.

*Plan-approving authority* means the department of community development which is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

*Post-development* refers to conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

*Pre-development* refers to conditions at the time the erosion and sediment control plan is submitted to the plan-approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

*Program authority* means the county which has adopted a soil erosion and sediment control program approved by the board.

*Responsible land disturber* means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:

- (1) Holds a responsible land disturber certificate of competence;
- (2) Holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection or plan review;
- (3) Holds a current contractor certificate of competence for erosion and sediment control; or
- (4) Is licensed in state as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (§ 54.1-400 et seq.) of chapter 4 of title 54.1.

*Single-family residence* means a noncommercial dwelling that is occupied exclusively by one family.

*Steep slope* means a slope greater than 3:1, or 33.3%.

*Stabilized* means an area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.

*State waters* means all waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdictions.

*Town* means the incorporated Town of Vinton.

*Transporting* means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-4. Administration of chapter in conjunction with subdivision and zoning ordinances.**

This chapter shall be administered, where applicable, in conjunction with the county's subdivision and zoning ordinances wherein such apply to the development and subdivision of land within the county or where such apply to development on previously subdivided land within the county.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-5. Local erosion and sediment control program.**

(a) Pursuant to Code of Virginia § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the state soil and water conservation board and those more stringent local stormwater management criteria which the county board of supervisors, may adopt by resolution and incorporate into the manual of regulations and policies entitled "Design and Construction Standards Manual" for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

(b) The county hereby designates the director of community development or his assignee as the plan-approving authority.

(c) The program and regulations provided for in this chapter shall be made available for public inspection at the office of the department of community development.

(d) Pursuant to Code of Virginia § 10.1-561.1, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The erosion control program of the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-6. Regulated land-disturbing activities; submission and approval of plans; contents of plans.**

(a) ~~Except as provided herein, no person shall engage in any land-disturbing activity until he has submitted to the department of community development for the county one (1) of the following for the land-~~

disturbing activity and it has been approved by the plan approving authority. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Department of Community Development an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned.

- (1) Where the land-disturbing activity results in between two thousand five hundred (2,500) square feet and five thousand (5,000) square feet and/or two hundred fifty (250) to five hundred (500) cubic yards of disturbed area, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.
- (2) Where the land-disturbing activity results in between five thousand (5,000) square feet and ten thousand (10,000) square feet and/or five hundred (500) to seven hundred fifty (750) cubic yards of disturbed area, either a plot plan prepared by a certified responsible land disturber or an engineered plan prepared by a professional engineer showing the erosion and sediment control measures must be submitted and executed by the plan-approving authority. A certified responsible land disturber must be named.
- (3) Where the land-disturbing activity results in ten thousand (10,000) square feet or more and/or seven hundred fifty (750) cubic yards or more of disturbed area, an erosion and sediment control plan must be submitted which has been prepared by a professional engineer. For disturbed areas of less than ten thousand (10,000) square feet, refer to the chart below to determine requirements for the site.

Square Feet	And/Or	Cubic Yards	Requirements
<2,500		0	Exempt from E&S Plan; *building permit plot plan required
2,500--5,000		250--500	"Agreement in Lieu" of a plan; permit fee; *building permit plot plan required
5,000--10,000		500--750	Certified RLD, *building permit plot plan by a certified RLD or a P.E.; permit fee
>10,000		>750	RLD, Erosion and sediment control plan prepared by a P.E.; agreement; surety; a *building permit plot plan, if required by the building commissioner

(b) \*Refer to the Virginia Uniform Statewide Building Code for Building Permit Plot Plan Requirements.

(c) If lots in a subdivision are sold to another owner, that person is responsible for obtaining a certified responsible land disturber and submitting a plot plan for each lot to obtain an erosion and sediment control permit.

(d) The standards contained with the "Virginia Erosion and Sediment Control Regulations," and The Virginia Erosion and Sediment Control Handbook and those more stringent local stormwater management criteria which the board of supervisors of the county, may adopt by resolution and incorporate into the manual of regulations and policies entitled "Design and Construction Standards Manual" are to be used by the applicant

when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. In cases where one standard conflicts with another, the more stringent applies. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. The plan approving authority may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions by granting a variance under the conditions noted in 4VAC50-30-50 of the Virginia Erosion and Sediment Control Regulations.

(e) The plan approving authority shall grant written approval within 45 days of the receipt of the plan, if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this chapter.

When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(f) Responsible land disturber requirement. As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by section 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity (the responsible land disturber). Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.

However, the plan-approving authority may waive the certificate of competence for an "Agreement in Lieu of a Plan" for construction of a single-family residence meeting the requirements in 8.1-3(t)(10) of this chapter. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the "Agreement in Lieu of a Plan" shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by section 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this chapter and may result in penalties provided in this chapter.

(g) An approved plan may be changed by the plan approving authority when:

- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

(h) In order to prevent further erosion, the county may require approval of a conservation plan for any land identified in the local program as an erosion impact area.



(i) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion control plan shall be the responsibility of the owner.

(j) ~~Whenever electric and telephone utility companies or railroad companies undertake any of the activities included in subdivisions (1) and (2) of this subsection, they shall be considered exempt from the provisions of this chapter.~~ Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

- (1) Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines, and pipelines; and
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

~~The board shall have 60 days in which to approve the specifications. If not action is taken by the board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions (1) and (2) of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions (1) and (2) of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The board shall have the authority to enforce approved specifications.~~ Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the Roanoke County erosion and sediment control ordinance.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. The Board shall have the authority to enforce approved specifications.

(k) State agency projects are exempt from the provisions of this chapter, pursuant to Code of Virginia, § 10.1-564.

(l) If the grade of a site is more than thirty-three and one-third (33.3) percent, refer to the International Building Code for steep slope development requirements.  
(Ord. No. 012704-9, § 2, 1-27-04)

(m) Cut slopes or fill slopes shall not be greater than 2:1 (horizontal:vertical), unless a geotechnical report is provided for the proposed slopes.

(n) Cut slopes or fill slopes shall not be greater than 25 vertical feet in height, unless a geotechnical report is provided for the proposed slopes. Cut slopes or fill slopes less than or equal to 3:1 (horizontal:vertical) may exceed 25 vertical feet in height and shall not require a geotechnical report.

(o) For any cut slopes or fill slopes greater than or equal to 2:1 (horizontal:vertical) and greater than or equal to 25 vertical feet in height, as-built plans showing that the finished geometry is in substantial

conformity with the design shall be provided to the plan-approving authority.

(p) Fill materials, compaction methods and density specifications shall be indicated on the site development plans. Fill areas intended to support structures shall also be indicated on the site development plans. Compaction test results (per VDOT standards) shall be submitted to the plan approving authority.

(q) Development plans for all new subdivisions shall show proposed lot grades to ensure positive drainage.

#### **Sec. 8.1-7. Permits; fees; bonding; etc.**

(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(b) No person shall engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this chapter, and has paid the fees and posted the required bond.

(c) Fees. An applicant requesting permission to begin land-disturbing activity pursuant to this article shall pay the following fees to cover the administrative expense of review, permitting, and inspection.

Square Feet	And/Or	Cubic Yards	Fees	Cap	Requirement
<2,500		<250	\$0.00		None
2,500--5,000		250--500	\$25.00		In lieu of agreement
5,000--10,000		500--750	\$50.00		Responsible land disturber
>10,000		>750	\$100.00 + \$100/disturbed acre or portion	\$500.00	Certified inspector for project
>10,000		>750	\$100.00 + \$100/disturbed acre or portion		No certified inspector for project

(d) Bond. All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the director of community development or his assignee, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held.

Within 60 days of adequate stabilization and completion of all other site requirements, as determined by the director of community development or his assignee, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated.

(e) These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

**Sec. 8.1-8. Monitoring, reports, and inspections.**

(a) The county may require the person responsible for carrying out the plan and/or the responsible land disturber to monitor and maintain the land-disturbing activity. The responsible land disturber will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The department of community development shall periodically inspect the land-disturbing activity as required under the state program to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the director of community development or his assignee determines that there is a failure to comply with the plan or if the plan is determined to be inadequate, notice shall be served upon the permittee, person responsible for carrying out the plan or the responsible land disturber by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

(c) Upon determination of a violation of this chapter, the director of community development or his assignee may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan or proper permits, the director of community development or his assignee may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land-disturbing and/or construction activities be stopped until an approved plan or any required permits are obtained. Failure to comply will result in civil penalties as outlined in section 8.1-9 of this chapter.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court.

If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the director of community development or his assignee may issue an order to the

owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county.

The owner may appeal the issuance of an order to the circuit court of the county. Any person violating or failing, neglecting or refusing to obey an order issued by the director of community development or his assignee may be compelled in a proceeding instituted in the circuit court of the county to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the director of community development or his assignee from taking any other action authorized by this chapter.

(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-9. Penalties, injunctions, and other legal actions.**

- (a) Violators of this chapter shall be guilty of a class I misdemeanor.
- (b) Civil penalties:
  - (1) A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:
    - a. Commencement of land disturbing activity without an approved plan as provided in section 8.6-1 shall be one thousand dollars (\$1,000.00)/day.
    - b. Vegetative measures--Failure to comply with items (1), (2) and (3) of the minimum standards shall be one hundred dollars (\$100.00)/violation/day.
    - c. Structural measures--Failure to comply with items (2), (4), (9), (10), (11), (15) and (17) of the minimum standards shall be one hundred dollars (\$100.00)/violation/day.
    - d. Watercourse measures--Failure to comply with items (12), (13) and (15) of the minimum standards shall be one hundred dollars (\$100.00)/violation/day.
    - e. Underground utility measures--Failure to comply with item (16)a. and/or c. shall be one hundred dollars (\$100.00)/violation/day.
    - f. Failure to obey a stop work order shall be one hundred dollars (\$100.00)/day.
    - g. Failure to stop work when permit revoked one hundred dollars (\$100.00)/day.
  - (2) Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land-disturbing activities without

an approved plan for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00). The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

(c) The director of community development or his assignee may apply to the circuit court of the county to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.

(d) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.

(e) Civil penalty enumerated. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the county. Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (b)(2) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (b) or (e).

(g) The county's attorney shall, upon request of the county or the permit issuing authority, take legal action to enforce the provisions of this chapter.

(h) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.  
(Ord. No. 012704-9, § 2, 1-27-04)

#### **Sec. 8.1-10. Appeals and judicial review.**

Any applicant under the provision of this chapter who is aggrieved by any action of the county or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the county board of supervisors. In reviewing the agent's actions, the board of supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the board of supervisors decision shall be final, subject only to review by the circuit court of the county. Any applicant who seeks an appeal hearing before the board of supervisors shall be heard at the next regularly scheduled board of supervisors public hearing provided that the board of supervisors and other involved parties have at least thirty (30) days prior notice.

Final decisions of the county under this chapter shall be subject to review by the county circuit court,

provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities. (Ord. No. 012704-9, § 2, 1-27-04)

**Sec. 8-1.11. Civil violations, summons, generally.**

(a) The director shall prepare an appropriate erosion and sediment control civil violation summons for use in enforcing the provisions of this chapter.

(b) Any inspector of the plan approving authority charged with enforcing this chapter shall serve upon any owner or permittee in violation of this chapter, a summons notifying the owner or permittee of said violation. If unable to serve the owner or permittee in person, the inspector may notify by summons an owner or permittee committing or suffering the existence of a violation by certified, return receipt requested mail, of the infraction. The county sheriff's office may also deliver the summons. The summons shall contain the following information:

- (1) The name and address of the person charged.
- (2) The nature of the violation and chapter provision(s) being violated.
- (3) The location, date, and time that the violation occurred, or was observed.
- (4) The amount of the civil penalty assessed for the violation.
- (5) The manner, location, and time that the civil penalty may be paid to the county.
- (6) The right of the recipient of the summons to elect to stand trial for the infraction and the date of such trial.

(c) The summons shall provide that any person summoned for a violation may, within five (5) days of actual receipt of the summons or, within ten (10) days from the date of mailing of the summons, elect to pay the civil penalty by making an appearance in person, or in writing by mail to the county treasurer's office and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the violation charged and provide that a signature to an admission of liability shall have the same force and effect as a judgment in court; however, an admission shall not be deemed a criminal conviction for any purpose.

(d) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the county shall cause the sheriff of county to serve the summons on the person charged in the manner prescribed by law. The violation shall be tried in general district court in the same manner and with the same right of appeal as provided for in Title 8.01 of the Code of Virginia. In any trial for a scheduled violation authorized by this section, it shall be the burden of the county to show the liability of the violator by the preponderance of the evidence. Any admission of liability, or finding of liability shall not be a criminal conviction for any purpose.

(e) The remedies provided for in this section are cumulative, and are not exclusive and, except as provided above, shall be in addition to any other remedies by law.

(f) The owner or permittee may pay the civil penalty to the treasurer prior to the trial date, provided he also pays necessary court costs in addition to the civil penalty.

(g) Within the time period prescribed in (c), above, the owner or permittee, may contest the violation by presenting it to the director, who shall certify the contest in writing, on an appropriate form, to the general district court.

(h) Failure to pay the civil penalty, or to contest the violation, within the time period prescribed in (c), above, shall result in the immediate issuance of a stop work order and the revocation of the permit, if any.  
(Ord. No. 012704-9, § 2, 1-27-04)